



*Christopher Heimann*  
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July 14, 2004

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: **CC Docket No. 02-6;**  
**Petition for Review and/or Waiver of Commitment Adjustment [Recovery of Funds]**

Dear Ms. Dortch:

On July 9, 2004, SBC Illinois and Ameritech Advanced Data Services, Inc. (AADS) filed a petition for review and/or waiver, appealing the May 10, 2004, Recovery Letters from the Universal Service Administrative Company (USAC) to SBC Illinois and Ameritech Advanced Data Services, Inc. rescinding funding due to actions by the applicant. SBC inadvertently failed to include three exhibits referred to in its petition. SBC resubmits herewith its petition, together with the exhibits. SBC requests that the Bureau substitute the attached documents for the petition filed on July 9.

SBC regrets any confusion the inadvertent failure to attach the exhibits may have caused. Please contact me (202-326-8909) if you have any questions concerning the foregoing.

Sincerely,

/s/ **Christopher M. Heimann**

Attachment

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application for Review of Decision of	)	CC Docket No. 02-6
The Schools and Libraries Division	)	
Of the Universal Service Administrative	)	
Company	)	
	)	
Appeal of Disbursed Funds Recovery Letters	)	
Funding Year: 2000-2001	)	
Form 471 Application Number: 190697	)	
Applicant: Harvey Public Library District	)	

**REQUEST FOR REVIEW AND/OR WAIVER BY  
SBC ILLINOIS AND AMERITECH ADVANCED DATA SERVICES, INC.**

SBC Illinois and Ameritech Advanced Data Services, Inc. (AADS) hereby appeal the May 10, 2004, Disbursed Funds Recovery Letters from the Universal Service Administrative Company (USAC) to SBC Illinois and AADS. *See* Letter of USAC to Mary Ann Imbrugia, SBC Illinois, attached hereto as Exhibit 1, and Letter of USAC to Mary Ann Imbrugia, AADS attached hereto as Exhibit 2 (collectively “Recovery Letters”). In each of those letters, USAC states that it is seeking recovery of funds for telecommunications and Internet access services delivered respectively by SBC Illinois and AADS to the Harvey Public Library District (the “Applicant”) during funding year 2000-2001 on the ground that such funds were disbursed for “services that were delivered prior to the beginning of the funding year.”<sup>1</sup> In both cases, the Applicant sought reimbursement from USAC using the BEAR process, and based its requests on bill dates rather than the dates services were provided. Consequently, it submitted invoices for

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<sup>1</sup> *See* Exhibit 1 at 5 (“During the course of an audit, it was determined that \$573.49 was disbursed for services that were delivered prior to the beginning of the funding year.”); and Exhibit 2 at 5 (“During the course of an audit, it was determined that \$5,774.63 was disbursed for services that were delivered prior to the beginning of the funding year.”).

12 months of service beginning with the month prior to the funding year, and did not submit invoices to USAC for the final month of that year.

There is no suggestion that SBC Illinois and AADS are responsible in any way for the Applicant's failure to comply with the e-rate rules, nor is there any claim that SBC Illinois and AADS should have, or even could have, been aware of or prevented the Applicant's erroneous submission of invoices for services delivered prior to the beginning of the funding year.<sup>2</sup> Yet, under existing procedures, USAC seeks to recover funds erroneously disbursed only from service providers, regardless of whether the service provider was responsible for the disbursement or could have done anything to prevent the error. These procedures are inequitable and inefficient, and undermine service providers' incentives to participate in e-rate projects. For these reasons, SBC Illinois and AADS have urged the Commission to develop new COMAD procedures that focus on the party or parties that are responsible for, or benefited from, e-rate funds, and thus promote accountability and incentives for all parties to comply with e-rate rules.<sup>3</sup> In the meantime, where, as here, a service provider already has disbursed e-rate funds to the applicant, and is not responsible for the erroneous disbursement of funds, the Commission should, to the extent necessary, waive existing procedures, and instruct USAC to seek reimbursement directly from the applicant.

In any event, SBC Illinois and AADS believe that the Commission should waive recovery of the erroneously disbursed funds from the Applicant in this case because it is clear that the Applicant was entitled to, and actually received, reimbursement for 12 months worth of service; it simply submitted invoices for the wrong 12 months of service. In these circumstances, requiring reimbursement would exalt form over substance and needlessly

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<sup>2</sup> As discussed below, when an applicant uses the BEAR process, it is responsible for properly invoicing USAC; the service provider merely certifies that it promptly will remit back to the applicant any reimbursement funds disbursed by USAC. The service provider has no way of knowing whether the applicant has submitted invoices for services provided outside the funding year, or preventing the applicant from doing so.

<sup>3</sup> Comments of SBC Communications Inc., CC Docket No. 02-6 (filed Mar. 11, 2004) (SBC Comments).

increase the costs of all concerned by requiring the applicant to repay USAC for reimbursements received for services provided in June 2000 and to resubmit invoices for services provided in June 2001.

## **I. BACKGROUND**

On May 10, 2004, USAC sent SBC Illinois a Disbursed Funds Recovery Letter, notifying SBC Illinois that USAC was seeking recovery of \$573.49 in e-rate funding committed to the Applicant pursuant to FRN 404405 due to non-compliance with the e-rate rules.<sup>4</sup> USAC's sole explanation for seeking recovery was:

During the course of an audit, it was determined that \$573.49 was disbursed for services that were delivered prior to the beginning of the funding year. According to the rules of the Schools and Libraries Support Mechanism funding can only be provided for services delivered during the appropriate funding year. Accordingly, the SLD must seek recovery of the \$573.49 that was erroneously disbursed.<sup>5</sup>

On the same day, USAC sent ADDS a virtually identical letter, notifying ADDS that USAC was seeking recovery of \$5774.63 in e-rate funding committed to the Applicant pursuant to FRN 404078, again explaining only that:

During the course of an audit, it was determined that \$5, 774.63 was disbursed for services that were delivered prior to the beginning of the funding year. According to the rules of the Schools and Libraries Support Mechanism funding can only be provided for services delivered during the appropriate funding year. Accordingly, the SLD must seek recovery of the \$5,774.63 that was erroneously disbursed.<sup>6</sup>

In both cases, the Applicant sought reimbursement from USAC for telecommunications services and Internet access services provided by SBC Illinois and AADS respectively using the BEAR process. And, SBC Illinois and AADS have learned that, in seeking such reimbursement, the Applicant sought reimbursement on invoices based on the dates the invoices issued rather

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<sup>4</sup> See Exhibit 1 at 5.

<sup>5</sup> *Id.*

<sup>6</sup> Exhibit 2 at 5.

than on the dates services were provided.<sup>7</sup> Consequently, the Applicant submitted invoices for 12 months of service beginning with the month prior to the funding year, and did not submit invoices to USAC for the final month of that year.<sup>8</sup>

## **II. DISCUSSION**

As discussed in more detail below, SBC Illinois and AADS believe that the Commission should waive altogether recovery of the erroneously disbursed funds at issue here. If, nevertheless, the Commission finds that recovery is appropriate, it should direct USAC to seek such recovery directly from the Applicant and, to the extent necessary, waive any procedures that might provide for recovery of such funds from SBC.

In 1999, the Commission first required USAC to adjust commitments for e-rate funding disbursed in violation of the 1996 Act, and directed it to develop a plan for recovering funding improperly or erroneously disbursed.<sup>9</sup> In a companion order, the Commission waived recovery of funds disbursed or committed in violation of four Commission rules on the ground that affected applicants or service providers may have reasonably relied on the funding commitments by USAC.<sup>10</sup> The following year, the Commission approved USAC's recovery plan, which generally provided for USAC to recover improperly disbursed e-rate funds from service providers, rather than applicants.<sup>11</sup> The Commission justified seeking recovery from service providers solely on the ground that "service providers actually receive disbursements of funds

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<sup>7</sup> KPMG Audit No. SL2003BE050, Attachment A at A-6 to A-8, and Management Response Detail at 31 (attached hereto as Exhibit 3).

<sup>8</sup> *Id.*

<sup>9</sup> *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, FCC 99-291 (rel. Oct. 8, 1999) (*Comad Order*).

<sup>10</sup> *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, 15 FCC Rcd 7197, para. 7 (1999) (*Waiver Order*).

<sup>11</sup> *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, 15 FCC Rcd 22975 (2000) (*Comad Implementation Order*).

from the universal service support mechanism.”<sup>12</sup> But, even then, the Commission acknowledged that these general procedures (*i.e.*, recovering funds from service providers) would not necessarily apply in all cases, “emphasiz[ing]” that these procedures would not apply in cases where the applicant “has engaged in waste, fraud, or abuse.”<sup>13</sup>

Application of the general Disbursed Funds Recovery procedures where, as here, service providers have complied with the e-rate rules exalts form over substance; is inequitable and inefficient; undermines incentives for Applicants to comply with the rules; and would discourage participation in the program. First, the mere fact that service providers, rather than applicants, “actually receive disbursement of funds” is irrelevant. Regardless of whom funds are “actually disbursed” to, it is the applicant, not service providers, to which e-rate funds are committed and which receives the benefits of such funds. Even if funds are disbursed to a service provider, the service provider cannot retain them, but rather must pass them through to the applicant through reimbursements or discounts. Service providers thus are merely conduits for the delivery of funds to the applicant. As such, it is the applicant, not a service provider, that owes a debt to the United States if funds are erroneously disbursed (except where a service provider itself has failed to comply with the e-rate rules). USAC therefore should seek recovery of such funds (either through demand or referral to the Justice Department) directly from the applicant where, as here, such funds were improperly disbursed due to applicant error.

Second, requiring SBC Illinois and AADS to repay USAC for the disbursed funds in this context would be inefficient and patently inequitable. USAC does not assert, nor could it, that SBC Illinois and/or AADS was in any way at fault for the Applicant’s erroneous requests for reimbursement for services delivered prior to the start of the funding year, or that SBC could have done anything to prevent the Applicant’s errors. Indeed, the errors identified are utterly

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<sup>12</sup> *Id.* at para. 8. The Commission stated that, in cases of applicant error, it expected service providers to recover from applicants any funds recovered from the service provider by USAC.

<sup>13</sup> *Id.* at para. 13.

beyond SBC Illinois's and AADS's control, and SBC Illinois and AADS had no way to identify (much less correct or prevent) these errors, nor would it even have learned of these errors had USAC not sent the Disbursed Funds Recovery Letters. In both of these cases, the Applicant sought reimbursement from USAC using the BEAR process. When an applicant uses this process for reimbursement, it is solely responsible for invoicing USAC. The service provider is required only to certify that it promptly will remit back to the applicant any reimbursement funds disbursed by USAC. The service provider does not review the charges the applicant has included on its BEAR form prior to its submission, and has no way of knowing whether the applicant has submitted invoices for services provided outside the funding year, or preventing the applicant from doing so. As a consequence, there was no way that SBC Illinois or AADS could have prevented the erroneous disbursement of funds to the Applicant or taken steps to remedy the Applicant's error.

Requiring SBC Illinois and AADS to repay the erroneously disbursed funds would force them either to try to recover the funds from the Applicant (which likely would be costly and time-consuming, and might be impossible), or absorb the loss. Either way, recovery from SBC Illinois and AADS will increase costs for all concerned, and unfairly punish SBC Illinois and AADS (which reasonably relied on the Applicant's certifications of compliance with e-rate requirements) for the mistakes of the Applicant. And, if SBC Illinois and AADS cannot recover the funds from the Applicant, the Applicant will receive a windfall to which it was not entitled.

Third, seeking reimbursement from SBC Illinois and AADS also would fail to provide proper incentives for the Applicant, and other applicants, to ensure that they have complied fully with e-rate program requirements. As noted above, requiring SBC Illinois and AADS to refund e-rate monies improperly disbursed due to applicant error would force SBC Illinois and AADS to seek recovery from the applicant. But obtaining such recovery from an applicant often has proven difficult because a service provider's only recourse, if an applicant fails to reimburse the provider for such funds, is to threaten to cut off service, which, of course, is unrealistic in light of the public interest implications of such action. Only by seeking refunds directly from applicants,

and denying future e-rate funding if an applicant fails to repay improperly disbursed funds, will the Commission provide appropriate incentives for all program participants to comply with the rules.

Finally, requiring service providers to repay e-rate funds where, as here, the applicant has failed to comply with the e-rate rules will reduce service providers' incentives to bid on e-rate projects, which, in turn, will reduce competition for e-rate contracts. In the end, both consumers and applicants will suffer as e-rate costs increase and e-rate funding (which is capped) fails to be used as productively as it otherwise would.

In any event, under the unique circumstances of this case, the Commission should waive recovery of the erroneously disbursed funds altogether. As noted above, on its BEAR form seeking reimbursement for payments for services provided in FY2000-2001, the Applicant based its reimbursement requests on bill dates rather than the dates services were provided by SBC Illinois and AADS. Consequently, the Applicant submitted invoices for 12 months of service beginning with the month prior to the funding year, and did not submit invoices to USAC for the final month of FY2000-2001. It is clear that the Applicant was entitled to, and actually received, reimbursement for 12 months worth of service; it simply submitted invoices for the wrong 12 months of service. In these circumstances, requiring reimbursement would exalt form over substance and needlessly increase the costs of all concerned by requiring the applicant to repay USAC for reimbursements received for services provided in June 2000 and to resubmit invoices for services provided in June 2001.<sup>14</sup> Because there is no evidence of fraud or other malfeasance, and the Applicant received no more funding than it was entitled to, the Commission should waive recovery altogether.

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<sup>14</sup> Or, worse yet, require SBC Illinois and AADS to repay such funds and then seek reimbursement from the Applicant, and require the Applicant to resubmit invoices for services provided in June 2001.

### III. CONCLUSION

For the foregoing reasons, the Commission should waive recovery of disbursed funds altogether. But, if the Commission nevertheless deems recovery appropriate in this case, it should (to the extent necessary) waive existing procedures and direct USAC to recover funds directly from the Applicant.

Respectfully submitted,

**/s/ Christopher M. Heimann**

CHRISTOPHER M. HEIMANN  
GARY L. PHILLIPS  
PAUL K. MANCINI

*Counsel for SBC Illinois and Ameritech  
Advanced Data Services*

1401 I Street, N.W., Suite 400  
Washington, D.C. 20005  
202-326-8909 – Voice  
202-326-8745 – Facsimile

July 9, 2004

**Federal Communications Commission**

**The FCC Acknowledges Receipt of Comments From ...**  
**SBC COMMUNICATIONS, INC.**  
**...and Thank You for Your Comments**

**Your Confirmation Number is: '200479787232**

<b>Date Received:</b>	<b>Jul 9 2004</b>
<b>Docket:</b>	<b>02-6</b>
<b>Number of Files Transmitted:</b>	<b>1</b>

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*updated 02/11/02*

# Exhibit 1



**Universal Service Administrative Company**  
Schools & Libraries Division

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**RECOVERY OF ERRONEOUSLY DISBURSED FUNDS**

May 10, 2004

Mary Ann Imburgia  
SBC Illinois  
SBC E-Rate Center, 444 Michigan Avenue, 2nd Floor  
Detroit , MI 48226 3683

Re:

Funding Year 2000 -2001  
Form 471 Application Number: 190697  
Applicant Name HARVEY PUBLIC LIBRARY DISTRICT  
Contact Person: Jay Kalman  
Contact Phone: 708-331-0757

Dear Service Provider Contact:

Reviews of Schools and Libraries Program disbursements occasionally reveal that funds were disbursed in error. Such discoveries may arise out of our periodic audits, attempts by applicants to reduce a funding commitment below the amount already disbursed, or other investigations resulting from our program compliance procedures. For example, funds may be disbursed in error when:

- Services were billed but were not delivered
- Services were billed in excess of the services delivered
- Services were returned but an appropriate refund to SLD was not made

The SLD has determined that the funds detailed on the attached FUNDING DISBURSEMENT SYNOPSIS were disbursed in error. This synopsis includes the specific funding requests, amounts, and reasons for recovery by Funding Request Number (FRN). The SLD must now recover the amount that was disbursed in error.

## FUNDING DISBURSEMENT SYNOPSIS

On the pages following this letter, we have provided a Funding Disbursement Synopsis for the Form 471 application cited above. The enclosed report includes a list of the FRNs from this application for which recovery of erroneously disbursed funds is necessary. Immediately preceding the Funding Disbursement Report, you will find a guide that defines each line of the Report. The SLD is also sending this information to the applicant named above.

## TO APPEAL THIS DECISION

If you wish to appeal the decision indicated in this letter, your appeal must be **RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER**. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Recovery Of Erroneously Disbursed Funds you are appealing. Indicate the funding request number and date of the Disbursed Funds Recovery letter. Your letter of appeal must also include the applicant name, the Form 471 Application Number, and the Billed Entity Number from the top of your letter.
3. When explaining your appeal, include the precise language or text that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, the SLD will be able to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the Client Service Bureau. We encourage the use of either the e-mail or fax filing options to expedite filing your appeal.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be **RECEIVED BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER**. Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the

Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options because of substantial delays in mail delivery to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

Schools and Libraries Division  
Universal Service Administrative Company

**Funding Disbursement Synopsis for Application Number: 190697**

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Funding Request Number 404405                      SPIN: 143001912  
Service Provider:    SBC Illinois  
Contract Number:    BAW11200HPLD  
Services Ordered:        TELCOMM SERVICES  
Site Identifier:    135535        HARVEY PUBLIC LIBRARY DISTRICT  
Billing Account Number:  
Funding Commitment:                      \$7,684.91  
Funds Disbursed to Date:                      \$6,987.40  
Funds to be Recovered:                      \$573.49

**Disbursed Funds Recovery Explanation:**

During the course of an audit, it was determined that \$573.49 was disbursed for services that were delivered prior to the beginning of the funding year. According to the rules of the Schools and Libraries Support Mechanism funding can only be provided for services delivered during the appropriate funding year. Accordingly, the SLD must seek recovery of the \$573.49 that was erroneously disbursed.

# Exhibit 2



**Universal Service Administrative Company**  
Schools & Libraries Division

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**RECOVERY OF ERRONEOUSLY DISBURSED FUNDS**

May 10, 2004

Mary Ann Imburgia  
Ameritech Advanced Data Services, Inc.  
SBC E-Rate Center, 444 Michigan Avenue, 2nd Floor  
Detroit , MI 48226 3683

Re:

Funding Year 2000 -2001  
Form 471 Application Number: 190697  
Applicant Name HARVEY PUBLIC LIBRARY DISTRICT  
Contact Person: Jay Kalman  
Contact Phone: 708-331-0757

Dear Service Provider Contact:

Reviews of Schools and Libraries Program disbursements occasionally reveal that funds were disbursed in error. Such discoveries may arise out of our periodic audits, attempts by applicants to reduce a funding commitment below the amount already disbursed, or other investigations resulting from our program compliance procedures. For example, funds may be disbursed in error when:

- Services were billed but were not delivered
- Services were billed in excess of the services delivered
- Services were returned but an appropriate refund to SLD was not made

The SLD has determined that the funds detailed on the attached FUNDING DISBURSEMENT SYNOPSIS were disbursed in error. This synopsis includes the specific funding requests, amounts, and reasons for recovery by Funding Request Number (FRN). The SLD must now recover the amount that was disbursed in error.

## FUNDING DISBURSEMENT SYNOPSIS

On the pages following this letter, we have provided a Funding Disbursement Synopsis for the Form 471 application cited above. The enclosed report includes a list of the FRNs from this application for which recovery of erroneously disbursed funds is necessary.

Immediately preceding the Funding Disbursement Report, you will find a guide that defines each line of the Report. The SLD is also sending this information to the applicant named above.

## TO APPEAL THIS DECISION

If you wish to appeal the decision indicated in this letter, your appeal must be **RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER**. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Recovery Of Erroneously Disbursed Funds you are appealing. Indicate the funding request number and date of the Disbursed Funds Recovery letter. Your letter of appeal must also include the applicant name, the Form 471 Application Number, and the Billed Entity Number from the top of your letter.
3. When explaining your appeal, include the precise language or text that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, the SLD will be able to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the Client Service Bureau. We encourage the use of either the e-mail or fax filing options to expedite filing your appeal.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be **RECEIVED BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER**. Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the

Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options because of substantial delays in mail delivery to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

Schools and Libraries Division  
Universal Service Administrative Company

**Funding Disbursement Synopsis for Application Number: 190697**

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Funding Request Number 404078 SPIN: 143005375

Service Provider: Ameritech Advanced Data Services, Inc.

Contract Number: D41598-2

Services Ordered: INTERNET ACCESS

Site Identifier: 135535 HARVEY PUBLIC LIBRARY DISTRICT

Billing Account Number:

Funding Commitment: \$57,945.37

Funds Disbursed to Date: \$63,720.00

Funds to be Recovered: \$5,774.63

**Disbursed Funds Recovery Explanation:**

During the course of an audit, it was determined that \$5,774.63 was disbursed for services that were delivered prior to the beginning of the funding year. According to the rules of the Schools and Libraries Support Mechanism funding can only be provided for services delivered during the appropriate funding year. Accordingly, the SLD must seek recovery of the \$5,774.63 that was erroneously disbursed.

# Exhibit 3



## Universal Service Administrative Company

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**To:** Mr. George McDonald, VP – Schools and Libraries Division

**From:** Internal Audit Division

**Date:** October 31, 2003

**Re:** Executive Summary - Schools and Libraries Beneficiary Audit Report – Harvey Public Library District (Audit No. SL2003BE050)

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The Internal Audit Division of the Universal Service Administrative Company and KPMG LLP performed an audit of the Schools and Libraries Support Mechanism application of the Harvey Public Library District located in Harvey, IL, Billed Entity Number 135535 for Funding Year 2000. KPMG was engaged on December 19, 2002, to perform agreed upon procedures audits based on a sample of beneficiaries and audit procedures developed by the Federal Communications Commission (FCC) Office of Inspector General (OIG).

The procedures in the attached report were performed for the purpose of assisting USAC in determining whether the Harvey Public Library District, as a recipient of support from the Schools and Libraries Support Mechanism of the Universal Service Fund, is complying with certain support mechanism rules and regulations established by the FCC. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and *Government Auditing Standards* (GAS) issued by the Comptroller General (GAS 1994 revision, as amended).

For the audit period, Harvey Public Library District received the following commitments and the following disbursements were made on its behalf:

	<u>Amount Committed</u>	<u>Amount Disbursed</u>	<u>Service Type</u>
	\$50,639.00	\$38,489.00	Internal Connections
	106,812.00	103,212.00	Internet Access
	<u>23,702.00</u>	<u>20,370.00</u>	Telecommunications
<b>TOTALS:</b>	<b>\$181,153.00</b>	<b>\$162,071.00</b>	

Based on the results of the review and test work, the Internal Audit Division has concluded that the Harvey Public Library District is generally compliant with the Schools and Libraries Support Mechanism program requirements for the funding year reviewed. The results of the audit disclosed apparent non-compliance with Schools and Libraries Support Mechanism regulations and/or procedures in the following areas:



8200 Greensboro Drive  
Suite 400 McLean, VA 22102

**Independent Accountants' Report  
on Applying Agreed-Upon Procedures  
USAC Report Number SL2003BE50**

Ms. Cheryl Parrino  
Chief Executive Officer  
Universal Service Administrative Company  
583 D'Onofrio Drive  
Suite 201  
Madison, WI 53719

We have performed the procedures enumerated in Attachment A, which were agreed to by the management of Universal Services Administrative Company (USAC), with respect to the 2000 Funding Year Applications submitted by Harvey Public Library District under Beneficiary No. 135535. These procedures were performed solely for the purpose of assisting you in determining whether Harvey Public Library District, as a recipient of support from the Schools and Library Support Mechanism (the "S&L Support Mechanism" or the "Support Mechanism") of the Universal Service Fund, as administered by the Schools and Libraries Division ("SLD") of USAC pursuant to the Federal Communications Commission ("FCC") regulations, is complying with certain Support Mechanism rules and regulations, in accordance with the FCC regulations. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and *Government Auditing Standards*, issued by the Comptroller General (GAS 1994 revision, as amended) (GAS). The sufficiency of these procedures is solely the responsibility of USAC. Consequently, we make no representation regarding the sufficiency of the procedures described in Attachment A either for the purpose for which this report has been requested or for any other purpose.

Specific procedures and related results have been enumerated in Attachment A to this report.

We were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on the Harvey Public Library District's compliance with S&L Support Mechanism rules and regulations. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the management of USAC and is not intended to be and should not be used by any parties other than the management of USAC.

**KPMG LLP**

March 13, 2003



KPMG LLP, KPMG LLP, a U.S. limited liability partnership, is  
a member of KPMG International, a Swiss association



Attachment A outlines the agreed-upon procedures for the Harvey Public Library District, the associated results, and any management responses obtained in relation to exceptions.

### **APPLICATION PROCESS**

The following procedures are associated with the USAC E-Rate application process for Harvey Public Library District (“Beneficiary” or “Library”) associated with its Funding Year (“FY”) 2000 Application. The procedures and associated results are documented in the following tables.

Procedure 1	Result(s)
Conduct Beneficiary Entrance Conference.	<p>On January 21, 2003 the KPMG engagement team conducted an entrance conference with the Library’s Director.</p> <p>In general, KPMG provided an overview of the process, introduced the team members that will be conducting the agreed-upon procedures and discussed how results would be communicated with the Library. A general timeline for the site review was also discussed</p>

Procedure 2	Result(s)
<p>Obtain the following documentation from the Beneficiary related to its FY 2000 Application for the purposes of completing the procedures enumerated throughout this document:</p> <ol style="list-style-type: none"><li>Technology Plan and approval letter (note: request related Technology Plan(s) for individual schools within the school district and the capital budgets supporting the Technology Plans, if applicable)</li><li>FY 2000-2001 technology budgets and/or school appropriations related to the E-rate.</li><li>Copy of OMB A-133 report for the fiscal years 2000 and 2001, if the Beneficiary is required to have a Single Audit.</li><li>Copies of fiscal year 2000 and 2001 financial statements.</li><li>Basis for discount calculation on Form 471 (i.e., rural vs. urban classification, number of students eligible and eligibility for the National School Lunch Program, or other eligibility method).</li><li>Overview of Beneficiary’s Service Provider selection process.</li></ol>	<p>KPMG obtained the listed documentation made available by USAC and the Library.</p>

Procedure 2	Result(s)
<p>g. List of all contracts with the Service Providers (including all related sub-contractor agreements) covering FY 2000 E-Rate program services.</p> <p>h. General description of the Beneficiary's information technology ("IT") environment and a high-level network diagram.</p> <p>i. General description of how E-Rate program funding for internal connections is being used in the IT environment.</p> <p>j. General description of the process in place (if any) to ensure removal of ineligible services and/or products prior to billing.</p> <p>k. General description of the billing process for the E-Rate program in FY 2000.</p> <p>l. General description of the Beneficiary's E-Rate inventory, change/field orders process and how the Beneficiary's total E-Rate program funding is affected, and how excess E-Rate program inventory is accounted for.</p> <p>m. Copies of local and/or state procurement regulations applicable to the Beneficiary as they relate to contracting for the purchases of internal connections, telephone service and internet access.</p> <p>n. Organization of the Beneficiary's E-Rate program team, including roles and responsibilities of all personnel involved in the administration of the E-Rate program.</p> <p>o. Correspondence with USAC related to extensions or appeals granted.</p>	

Procedure 3	Result(s)
If the Beneficiary is a private school, determine by reference to the Beneficiary's financial statements if it had endowments exceeding \$50 million during FY 2000.	The Library is not a private school; rather it is a public library. Therefore, this procedure is not applicable.

Procedure 4	Result(s)
If the Beneficiary is required to file an OMB Circular A-133 report, read the reports which included FY 2000 and note if any material deficiencies were reported. If a material deficiency was reported, identify and list those deficiencies that may impact the Schools and	KPMG was informed that the Library did not have an OMB Circular A-133 report; therefore, this procedure is not applicable.

Libraries Universal Services Program funds in FY 2000.	
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Procedure 5	Result(s)
Read the information regarding the Beneficiary's Technology Plan approval in Block 4, Line 8 on Form 486 for FY 2000. Determine that the approver listed on this Form, is included on the SLD certified "Technology Plan Approvers" list for FY 2000, that the Technology Plan includes a signature documenting the approval, and that the Technology Plan was consistent with USAC requirements.	<p>KPMG read the information in Block 4, Line 8 on FCC Form 486 for the Beneficiary, which indicated that the Suburban Library System of the Illinois State Library approved the Library's Technology Plan. This party was identified by USAC as an authorized approver.</p> <p>KPMG obtained a copy of the Beneficiary's Technology Plan and noted it was approved by the party identified above and was consistent with USAC requirements.</p>

Procedure 6	Result(s)
Identify the basis used to calculate the Beneficiary's discount percentage on FCC Form 471. Compare the basis to the E-Rate approved basis for FY 2000. Also, recalculate the discount percentage calculations for the schools in the Beneficiary's district.	<p>KPMG compared the basis used to perform the claim discount calculation on the Library's FCC Form 471 to the information presented for Harvey School District 152. In addition, KPMG recalculated the discount rates for all seven (7) schools in the Harvey School District.</p> <p><i>No exceptions were noted.</i></p>

Application Process Summary	No exceptions were noted.
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### **SERVICE PROVIDER SELECTION AND ELIGIBILITY**

The following procedures are associated with the USAC E-Rate process that the Library utilized in FY 2000 to select and determine eligibility of potential and contracted Service Providers. The procedures and associated results are documented in the following tables.

Procedure 7	Result(s)
Gain an understanding of the Beneficiary's Service Provider selection process by reviewing documents provided by the Beneficiary and through inquiry. Determine whether the Beneficiary's Service Provider selection process included competitive bidding and cost/benefit analysis in FY 2000 as recommended by USAC.	KPMG gained an understanding of the Library's Service Provider selection process, the bidding procedures, and any cost-benefit analysis techniques used by the Beneficiary by reviewing documents provided by the Beneficiary and through inquiries of Beneficiary personnel. KPMG determined that the Beneficiary's process included competitive bidding and cost/benefit analysis in FY 2000.

Procedure 8	Result(s)
Select a sample of eight (8) Service Providers	KPMG selected a sample of eight (8) Service Providers for



Procedure 8	Result(s)
for FY 2000 E-Rate services and/or products. For each Service Provider selected, obtain the applicable FCC Forms 498 (Service Provider Registration Form) and FCC Form 473 (Service Provider Annual Certification Form) and determine if those forms were completed in accordance with USAC requirements.	FY 2000 and verified each Service Provider had completed the required FCC Form 498 and/or Form 473. KPMG reviewed each Service Provider form to verify that all information had been completed per USAC requirements.  <i>No exceptions were noted.</i>

Procedure 9	Result(s)
Based on a USAC provided summary of FY 2000 committed/disbursed E-Rate funds for the Harvey Public Library District, select two (2) Funding Request Numbers (FRN), obtain the contracts for which the Beneficiary sought reimbursement and perform the following:	Based on a USAC provided summary of FY 2000 committed/disbursed E-Rate funds for the Library, KPMG selected two (2) contracts associated with the following FRNs for which the Library sought reimbursement: <ul style="list-style-type: none"><li>- FRN 404078: Ameritech Advance Data Services</li><li>- FRN 405055: AllTech Data Systems, Inc.</li></ul>
a. Compare the selected contracts' services and/or products to the FY 2000 E-Rate program "Eligible Services List" dated December 29, 2000 ("ESL"). Identify any services and/or products for which reimbursement was sought by the Beneficiary that were identified as ineligible in the ESL.	KPMG compared the services and/or products for the selected contracts to the ESL.  <i>No services or products included in the selected FRNs were identified as ineligible in the ESL.</i>
b. Compare the information in Block 2, Summary Description of Needs or Services Requested, of FCC Form 470 to the description of services and/or products in the selected contracts.	KPMG compared the information in Block 2, Summary Description of Needs or Services Requested, of FCC Form 470 to the description of services and/or products in the selected contracts.  <i>No exceptions were noted.</i>
c. Compare the information in Block 5, Discount Funding Request(s), of the FCC Form 471 to the selected contracts.	KPMG compared the information in Block 5, Discount Funding Request(s), of the FCC Form 471 to the selected contracts. Block 5 contains the Service Provider "SPIN" number and name, the eligible service start date, allowable contract date, the eligible monthly amount, and the discount percentage, among other data elements.  <i>No exceptions were noted.</i>
d. For any selected contracts, which were awarded on or before July 10, 1997, determine whether the contract was voluntarily extended beyond the original contract termination date. If so, determine whether the contract extension was subject to a competitive bidding process and was initiated by	None of the selected contracts were awarded on or before July 10, 1997; therefore, this procedure is not applicable.

Procedure 9	Result(s)
posting an FCC Form 470, in accordance with SLD program guidelines.	

Service Provider Selection and Eligibility Summary	No exceptions were noted.
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## **REIMBURSEMENT PROCESS**

The following procedures are associated with the USAC E-rate process that the Library utilized in funding Year 2000 to ensure the eligibility of Telecommunications, Internet Access, and Internal Connections. The procedures, the associated results, and any management responses obtained in relation to exceptions are documented in the following tables.

Procedure 10	Result(s)
Gain an understanding of the Beneficiary's reimbursement process by reviewing documents provided by the Beneficiary and through inquiry. Determine whether the Beneficiary's reimbursement process included tracking of E-Rate related expenditures and status of work performed in FY 2000.	KPMG gained an understanding of the Beneficiary's reimbursement process by reviewing documents provided by the Beneficiary and through inquiries of Beneficiary personnel. KPMG determined that the Beneficiary's process included tracking of E-Rate related expenditures and status of work performed in FY 2000.

Procedure 11	Result(s)
If the Beneficiary filed any FCC Billed Entity Applicant Reimbursement (BEAR) forms (FCC Form 472) for FY 2000, select six (6) completed BEAR forms and verify that they were signed by the Service Provider.	<p>The Library filed six (6) BEAR Forms associated with the following nine (9) FRNs. KPMG reviewed all six and verified that they were signed by the Service Provider:</p> <ul style="list-style-type: none"> <li>- Ameritech Advance Data Services - FRN 404076</li> <li>- Nap.net - FRN 404151</li> <li>- Universal Access - FRN 404216</li> <li>- Net Access - FRN 404295</li> <li>- Ameritech Illinois - FRNs 404331, 404381, 404405, 404453, and 404504</li> </ul> <p>No exceptions were noted.</p>

Procedure 12	Result(s)
Obtain information about the Beneficiary's reimbursement process to determine that eligible and ineligible items are properly segregated prior to submitting invoices to	KPMG obtained information about the Beneficiary's reimbursement process through inquiries of Beneficiary personnel to determine that eligible and ineligible items are properly segregated prior to submitting invoices to USAC

Procedure 12	Result(s)
USAC for reimbursement.	for reimbursement. KPMG was informed that the Beneficiary executes separate contracts for eligible versus ineligible items and reviews invoices upon receipt to determine that the invoices to be submitted for reimbursement from USAC contain only eligible items.
Select thirteen (13) invoices from the 2 FRNs selected in Procedure 9 above and compare invoices to contract terms and billing.	<p>KPMG selected thirteen (13) invoices from the two (2) FRNs selected in Procedure 9 above and compared those invoices to contract terms and billing.</p> <p>KPMG noted the following exception:</p> <p><i>The services described on the invoice related to FRN 404078 were received prior to the start of the Funding Year and, as such, were improperly included on the FY 2000 reimbursement form. The discount amount for this invoice was \$5,774.63.</i></p>
	<p><b>Management Response</b></p> <p>The Beneficiary based the submittal on the invoice date and not on the date of service. The Library also indicated that since they adopted this practice of using invoice date, that they did not submit for FY 2000 reimbursement for June 2001 which would have been submitted for reimbursement in FY 2001. Management will contact USAC-SLD to determine how to rectify the situation in the current year.</p>

Procedure 13	Result(s)
Judgmentally select six (6) completed reimbursement forms (BEARS and/or FCC Form 474, Service Provider Invoice Forms ("SPI")) from the USAC provided file of all FY 2000 Beneficiary requests for payment, and perform the following:	<p>KPMG selected four (4) completed BEAR Forms and two (2) completed SPI Forms, related to the following five (5) FRNs upon which the agreed-upon procedures were performed:</p> <ul style="list-style-type: none"> <li>- BBN Telecom – 404151</li> <li>- Universal Access, Inc. – 404216</li> <li>- Ameritech Illinois – 404405</li> <li>- Data Comm Networking, Inc. – 404619</li> <li>- AllTech Data Systems - 405055</li> </ul>
a. Compare the Beneficiary's records to support that the Service Provider's bill to the Beneficiary was processed (reviewed and paid) in accordance with the Beneficiary's standard procedures.	<p>KPMG compared the Library's records, typically the related invoices, to support that the Service Provider's bill to the Library was processed (reviewed and paid) in accordance with the Library's standard procedures.</p> <p><i>No exceptions were noted.</i></p>
b. Verify that supporting documentation exists for the approval of the invoice in accordance with the Beneficiary's	KPMG verified that supporting documentation exists, typically copies of signed invoices, for the approval of the

Procedure 13	Result(s)
standard procedures.	invoices.  <i>No exceptions were noted.</i>
c. Compare the discount percentage as submitted on the reimbursement forms to the discount percentage documented in the related Funding Commitment Decision Letter (FCDL) issued by USAC and verify that it was applied appropriately.	KPMG compared the discount rate as submitted on the reimbursement forms to the FCDL and verified that it was applied appropriately.  <i>No exceptions were noted.</i>
d. Verify that Beneficiary source documents support the services and/or products billed and that the Beneficiary documented review and approval for the products and/or services being billed to determine that the Service Provider only applied discounts to services and/or products included in the ESL.	KPMG agreed the products and/or services listed on the Service Provider invoices for which discounts were taken to the ESL. The only exception noted was previously reported in the results for Procedure 12 above.  <i>No other exceptions were noted.</i>
e. Identify any substitute services or products and compare these products or services to the ESL.	KPMG was informed that there were no substitute services and/or products for the Library.
f. Determine by reference to supporting documentation that non-discounted costs (Beneficiary's share) was paid timely and in accordance with contract and/or invoice terms.	KPMG determined that the non-discounted costs (Library's share) were paid timely and in accordance with contract and/or invoice terms.  <i>No exceptions were noted.</i>
g. Compare the SPIs to the Service Provider's bill to the Beneficiary. Verify that the total billed costs (to the USF program and Beneficiary) do not exceed the total cost of the eligible products and services delivered under the FRN and that the Service Provider is only seeking reimbursement of eligible costs and applied the approved discount rate.	KPMG compared the selected SPI Forms to the Service Providers' bills and to the Library's invoice and verified that the total billed costs (to the USF program and Beneficiary) did not exceed the total cost of the eligible products and services delivered under the respective FRNs and that the Service Provider only sought reimbursement of eligible costs and applied the approved discount.  <i>No exceptions were noted.</i>
h. For BEAR transactions, verify that the Beneficiary paid all amounts to the Service Provider and is only seeking reimbursement of eligible paid costs and applied the approved discount rate.	For BEAR transactions, KPMG verified, by inspection of invoices, that the Library paid all amounts to the Service Providers and only sought reimbursement of eligible paid costs and applied the approved discount rate with the exception of the following:  <i>FRN 404216 – An ineligible amount of \$87.39 was included in the reimbursement form. This amount exceeded the FCDL commitment amount, but USAC did not remit this amount to the Beneficiary.</i>  <i>FRN 404405 – An ineligible amount of \$842.49 was</i>

Procedure 13	Result(s)
	<p><i>included in the reimbursement form. This item related to services acquired prior to the beginning of the allowable service date.</i></p> <p><i>FRNs 404151 and 404216 – The amount listed on the BEAR Form for reimbursement exceeded the amount approved on the FCDL. USAC did not pay the amount above that approved on the FCDL.</i></p>
	<p><b>Management Response:</b></p> <p>Both items were an oversight by the Beneficiary and will be discussed with the staff to help ensure that these issues do not happen in the future.</p>
i. Compare the Beneficiary's asset/inventory records to selected invoices to verify that the billed equipment is listed on the inventory (including make, model and serial number).	<p>KPMG could not perform this procedure because the Library does not maintain asset/inventory records. KPMG considered this an exception.</p>
	<p><b>Management Response:</b></p> <p>Per discussion with the Library personnel, the Library District has never maintained asset/inventory records. However, the Library Director indicated that he would certify that all equipment purchased through the E-rate program is on the premises and would appear on an inventory list if and when one were created.</p>
j. Identify eligible equipment or services listed on the asset records that are located in non-classroom buildings or library facilities that do not directly serve patrons by inquiry of the Beneficiary or review of other supporting information. For such equipment or services, verify that the building(s) are "conditionally eligible" for USF support.	<p>Since the Library does not maintain asset/inventory records, KPMG was unable to perform this procedure.</p>

Procedure 14	Result(s)
Perform site visit to the Service Provider(s).	KPMG and USAC agreed not to perform Service Provider site visits at this time.

Procedure 15	Result(s)
Perform a site visit of the Library and perform the following:	The Library is one self-contained, centralized site in Harvey, Illinois; therefore, the site visit was limited to the Library itself.

Procedure 15	Result(s)
a. For selected sites, compare equipment approved and listed on the FCC Form 471 to the Beneficiary's asset records. Also, determine that all equipment for the selected building is installed and operational. <i>(Note: The verification should include comparing the make, model and serial number of the equipment to the asset list.)</i>	<p>Since the Library does not maintain asset/inventory records, KPMG was unable to perform this procedure. However, at the request of USAC, KPMG attempted to compare equipment listed on the FCC Form 471 to a physical inventory performed at the Library.</p> <p>The only piece of equipment identified as being purchased in FY 2000 was a "Blade", which is no longer in use. During discussion with the Library's Director, he informed KPMG that he installed the "Blade" in FY 2000, but this piece of equipment was replaced in FY 2001 with a new switch that was more compatible with a PBX system that was installed in that year. The equipment was still on premises and we were instructed that it could be used as an emergency back-up should the new switch falter. KPMG does not consider this to be an exception.</p>
b. Obtain a description of the equipment selected in Procedure 15 a. Compare the description of the use to the approved Technology Plan.	<p>Since the Library does not maintain asset/inventory records, KPMG was unable to perform this procedure as to specific equipment. At USAC's request, KPMG obtained a description as to the use of E-Rate funded equipment at the Library and compared responses to the approved Technology Plan.</p> <p><i>No exceptions were noted.</i></p>
c. Select at least 2 systems installed in a classroom or library and test it by accessing the internet, LAN or intranet.	<p>KPMG selected two (2) systems within the Library and tested them by accessing the internet.</p> <p><i>No exceptions were noted.</i></p>
d. For selected administrative buildings, compare assets acquired to the ESL. <i>(Note: If services are provided to administrative buildings, ensure they are part of a network of shared learning that connects to classrooms or library facilities available to the public.).</i>	<p>The Library building is not an administrative building; therefore, this procedure is not applicable.</p>

## Reimbursement Process Summary

Three (3) exceptions were noted.

## Overall Summary

Three (3) exceptions were noted.

# Management Response Detail

Beneficiary		Harvey Public Library		Issue		Amount to Recover
Rpt. Ref.	Step	Issue Type	Issue Amount	Policy Issue	Cleared	
12	325	Fund Year - Services not provided in fund	\$5774.63	No Policy Issue		\$5774.63
<b>Issue Details as quoted from audit report</b>						
The invoice relating to FRN 404078 (BEAR 269713) included charges for the prior fund year. (June 2000)						
<b>Application Resolution</b>						
Recovery will be sought for the services delivered before the funding year.						
13h	551	Fund Year - Services not provided in fund	\$929.88	No Policy Issue		\$572.49
<b>Issue Details as quoted from audit report</b>						
The auditors noted that a portion of invoices for FRNs 404216 and 404151 were submitted with ineligible service and/or amounts in excess of the funding commitment. However, the auditors also noted that SLD did not make a disbursement for these amounts. The auditors also indicated that a portion of the invoice for FRN 404405 was also submitted with services supplied before the funding year. The ineligible portion is \$842.49.						
<b>Application Resolution</b>						
No recovery is required for FRNs 404216 and 401451 as SLD did not make any disbursements for the ineligible amounts. The auditors indicated that two customer bills were for service prior to the fund year for FRN 404405. The pre-discount amount at question is \$936.01. The service was for telecommunications service where SLD considers the date of the bill to be the date of the service. \$536.10 was on a customer bill dated June 16, 2000. This amount is considered to be for services before the funding year and a recovery of \$572.49 (90%) is required. The balance of the amount at question is documented on a customer bill dated July 16, 2000 and is therefore						
13i	552	Services - Fixed asset records not maintained	Not determined	No Policy Issue		No recovery required
<b>Issue Details as quoted from audit report</b>						
The school does not maintain fixed asset records.						
<b>Application Resolution</b>						
This is not a rule violation.						